

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/06/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000705

FILED: _____

ZACHARY MICHAEL TUDOR

NEAL C TAYLOR

v.

STATE OF ARIZONA

ALISON FERRANTE

DISPOSITION CLERK-CSC
GILBERT CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY

GILBERT CITY COURT

Cit. No. 76615

Charge: A. DUI-IMPAIRED
B. DUI-BAC ABOVE .10%
C. NO MUD FLAPS

DOB: 04/20/76

DOC: 11/18/00

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on May 13, 2002. This Court has reviewed the record of the proceedings from the Gilbert City Court, and the Memoranda submitted by counsel.

On November 18, 2000, Appellee, Zachary Michael Tudor, was arrested in the City of Gilbert and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving With a Blood Alcohol Content Greater than .10, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); No Mud Flaps, a Civil Traffic violation in violation of A.R.S. Section 28-958.01(A). Appellee filed a Motion to Suppress all evidence obtained by the Gilbert Police as the result of an alleged illegal stop and seizure of Appellee. The trial court held an evidentiary hearing on Appellee's motion on May 25, 2001. Gilbert Police Officer Gillis testified on behalf of the State the he observed a truck in a parking lot running with its headlights on. As the officer entered the parking lot, the truck exited through another opening to the street. The police officer followed the truck and noticed that the truck was higher than a normal stock vehicle and had no mud flaps. The officer made a traffic stop and, during the traffic stop, observed beer cans within the pickup truck and smelled the odor of alcohol. At the conclusion of the evidentiary hearing, the trial judge granted Appellee's Motion to Suppress and suppressed all evidence obtained after the stop of Appellee's vehicle. On June 5, 2001, the State moved to dismiss the case without prejudice and filed a Notice of Appeal.

Appellant claims that the trial court erred in suppressing all evidence gathered after the stop of Appellee's vehicle. Both parties and the trial court have focused on the issue whether the Gilbert Police officer (Officer Gillis) had probable cause to stop Appellee's vehicle. However, the appropriate standard is not one of probable cause, but whether the Gilbert Police officer had a "reasonable suspicion" which would justify the stop of Appellee's vehicle. An investigative stop is lawful

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if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.¹ These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."² A.R.S. Section 13-3883(B) also provides, in pertinent party, authority for police officers to conduct a "investigative detention":

A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.³ In Whren, the United States Supreme Court upheld the District Court's denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere

¹ Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

² United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, (1981).

³ Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

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pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.⁶ An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual findings for an abuse of discretion.⁸ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁹ This Court must review de novo the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

In this case, the trial judge concluded that the officer could not articulate a specific justification for the traffic stop; however, the record discloses that the officer explained in detail his observations that a civil traffic violation had occurred: the violation of A.R.S. Section 28-958.01(A) No Mud Flaps. Though the officer characterized his opinions as a "belief" that the civil traffic violation of No Mud Flaps was committed by Appellee, his beliefs obviously gave rise to the officer issuing a citation for No Mud Flaps, and constitute circumstances which furnish a reasonable suspicion for the

⁵ Id.

⁶ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, Supra.

⁷ Id.

⁸ State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁹ State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

¹⁰ State v. Gonzalez-Gutierrez, 187 Ariz. at 118, 927 P.2d at 778; State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

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officer to make the traffic stop of Appellee's vehicle. In reviewing the totality of the circumstances, this Court specifically finds requisite reasonable suspicion was established within the record through the testimony of Officer Gillis. The trial judge erred in granting the Motion to Suppress.

IT IS THEREFORE ORDERED reversing the Gilbert City Court's order which granted Appellee's Motion to Suppress.

IT IS FURTHER ORDERED remanding this matter back to the Gilbert City Court with instructions to vacate its order that granted Appellee's Motion to Suppress, and to enter an order denying said Motion to Suppress.

IT IS FURTHER ORDERED that this matter is remanded for a trial and all further proceedings consistent with this opinion.